

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Approval to) Case No. 15-50-GA-RDR
Modify Rider FBS, Rider EFBS, and)
Rider FRAS.)

**MEMORANDUM CONTRA
TO THE REHEARING PETITION
FROM DUKE ENERGY OHIO BY
THE RETAIL ENERGY SUPPLY ASSOCIATION**

I. Introduction

Pursuant to Rule 4901-1-35(B) of the Ohio Administrative Code, the Retail Energy Supply Association (“RESA”)¹ hereby files this Memorandum Contra to the Application for Rehearing submitted on February 5, 2016, by Duke Energy Ohio, Inc. (“Duke”). Duke asks the Public Utilities Commission of Ohio (“Commission”) to grant rehearing for two alleged errors made in the January 6, 2016 Opinion and Order. Specifically, Duke alleges that the January 6th Opinion and Order is unjust and unreasonable because:

- a) The Commission’s Opinion and Order fails to direct the Company in respect of customers who are “process only” customers.
- b) The Commission Opinion and Order states that spot purchases should be monitored for the 2016-2017 heating season, but does not explain what its

¹ The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

intended outcome will be if it is determined that spot purchases impact Gas Cost Recovery (“GCR”) customers.²

For the following reasons, RESA believes that the Commission should deny rehearing for both of Duke’s alleged errors. What the Commission should do is grant RESA’s request for rehearing, including the implementation of an interim solution for the next two balancing contract years. During that interim period, Duke’s concerns about “Process Only” gas users and the treatment of its spot purchases for GCR could also be analyzed and addressed for the future.

II. Reject rehearing related to “Process Only” gas users.

Duke has asked for rehearing on the grounds that the Commission’s Opinion and Order commencing with the storage year 2017-2018 should exclude “Process Only” gas users from the requirement that all accounts over 6,000 dekatherms per day (“Dth/Day”) must use the Enhanced Firm Balancing Service. The Enhanced Firm Balancing Service differs from the Firm Balancing Service in that the Enhanced service contains storage assets for which the transporter must pay whether the transporter wants or needs the storage. Duke made clear the reason it seeks to change the existing balancing tariffs is to avoid a storage imbalance, particularly if transporters in the future select less Enhanced Firm Balancing Service.³ Further, to make the administration of balancing its storage and transmission assets easier, Duke proposed that accounts over 20,000 Dth/Day no longer be able to buy the Firm Balancing Service.⁴ RESA pointed out that this proposal discriminates against transporters with more than 20,000 Dth/Day versus those under the threshold.⁵

² Duke Application for Rehearing at 1.

³ Duke Ex. 2 (Direct Testimony of Jeff Kern) at 5-6.

⁴ *Id.* at 10; Duke Ex. 1 (Application).

⁵ RESA Ex. 1 (Direct Testimony of Thomas Scarpitti) at 5, 14-15.

Forcing transporters to use a balancing service they do not want in order to address an imbalance in interstate pipeline assets held by Duke is the metaphorical equivalent of pounding a square peg into a round hole. To rectify a surplus of interstate storage service and/or a shortage of interstate pipeline firm transportation service, the more direct solution would be to reduce the amount of interstate storage rights under contract and increase the amount of firm transportation. Mr. Scarpitti provided an interim two-year solution to provide time to work out how the contract amendments could be arranged.⁶ The Staff also proposed an interim solution of just requiring that all transporters today be limited to not reducing the amount of Enhanced Firm Balancing Service the transporter holds, since the current amount of Enhanced Firm Balancing provides Duke with enough storage demand to balance its load.⁷

The Commission in its January 6th Opinion and Order adopted the Staff solution for the first year, then crafted a solution for contract year 2017-2018 using a 6,000 Dth/Day requirement to buy Enhanced Firm Balancing Service. To substantiate the 2017-2018 solution for Duke's storage and transmission problem, the Commission strayed outside the hearing record and referred to facts and proposals found in the Management/Performance Audit Report ("GCR Report") filed in Case No. 15-218-GA-GCR. The GCR Report was written and submitted to the Commission after the hearing in the matter at bar, and since the GCR Report was prepared for a separate proceeding that has yet to come to hearing, the Report has not be subjected to cross examination. As pointed out in RESA's and IGS' petitions for rehearing, the Commission cannot go outside the record for facts or proposals.⁸

This brings us to Duke's first assignment of error: "The Commission's Opinion and Order fails to direct the Company in respect of customers who are 'process only' customers."

⁶ RESA Ex. 1 (Direct Testimony of Thomas Scarpitti) at 4-6.

⁷ Staff Initial Brief at 4-5.

⁸ *Forest Hills Utility Co. v. Pub. Util. Comm.* (1974), 39 Ohio St.2d 1, 68 O.O.2d 1, 313 N.E.2d 801.

The issue of “Process Only” users was not a focus at the hearing.⁹ RESA agrees that customers who do not have a load profile requiring storage should not have to buy a balancing service with storage. But, to put that premise into practice as part of the Duke tariff, the Commission will have to define what constitutes “Process Only” use. It is highly likely that even process users have some master-metered uses that are temperature sensitive, such as heating manufacturing space, office space or warehouse space. Further, the Commission could not assure just and reasonable rates were being charged for balancing as required by Section 4905.22, Revised Code, without knowing what affect exempting Process Only use will have on other customers.

Given these important considerations that have yet to be addressed and evaluated for Process Only users, the Commission simply cannot grant Duke’s rehearing petition based on the record before it. The solution is to limit the Opinion and Order to an interim solution for a limited period of time, and go forward with additional proceedings to craft an efficient and equitable solution to Duke’s interstate pipeline contract imbalance.

III. The Commission’s Opinion and Order is complete as to spot purchases.

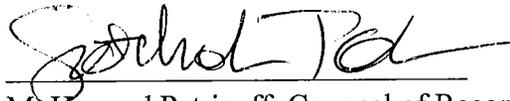
As Duke correctly observes, the Commission’s Opinion and Order does state that spot purchases should be monitored for the 2016-2017 heating season. As Mr. Scarpitti testified, spot purchases are a normal part of providing a natural gas supply.¹⁰ The only way to avoid having spot purchases is to cover more than 100% of the demand with firm supply contracts, which may be suboptimal from the cost-efficiency perspective. With that in the record, the Commission did not, and could not have found that that the mere existence of spot purchases was harmful to GCR customers. So the Opinion and Order rightly calls for the Staff to monitor the spot purchases.

⁹ Brief references were made during the hearing. Tr. at 22 (“There is an entirely different system that’s used for the interruptible transportation customers to account for their balancing.”) and Tr. at 87 (“[W]e do have some customers that are process only load and * * * there is no way they could manage an FBS bank so there would have to be some kind of exception built in * * *.”)

¹⁰ RESA Ex. 1 at 13-14; Tr. at 134, 135.

Though not fully articulated, Duke probably is asking for some assurance that regardless of why it will make spot purchases, it should be entitled to 100% compensation. Whether Duke is entitled to full compensation for its spot purchases in contract year 2016-2017 is a matter for determination in a future GCR proceeding that covers the contract year 2016-2017.¹¹ The Commission should not assure cost recovery in this proceeding for an issue that it will evaluate later on. Accordingly, this second assignment of error should be denied.

Respectfully submitted,



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¹¹ Duke's pending GCR proceeding (Case No. 15-218-GA-GCR) involves the audit period of September 2012 through August 2015.

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served (via electronic mail) on the 16th day of February, 2016 upon the persons listed below.



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